IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA CHARLOTTE DIVISION 3:14 CV 288

CATHERINE DIEHL,)	
Plaintiff)	
)	<u>ORDER</u>
V)	
WILLIAM K. DIEHL, JR.,)	
Defendant	,)	

THIS MATTER has come before the undersigned pursuant to a Certification and Report of F.R.C.P. 26(f) Conference and Discovery Plan (#8) filed by the parties in this matter requesting that the Court enter a Pretrial Order and Case Management Plan.

LCvR 16.1(A) provides as follows:

- (A) Initial Attorney's Conference. As soon as is practicable, and in any event not later than fourteen (14) days from joinder of the issues (as defined in Section (D) below), the parties or their counsel shall confer as provided by Fed. R. Civ. P.26(f), and conduct an "Initial Attorney's Conference" ("IAC"). In addition, counsel shall also discuss at such conference consent to magistrate judge jurisdiction. See LCvR 73.1(C).
- **(D) Joinder of the Issues.** For the limited purpose of these Local Rules, "joinder of the issues" occurs when the final answer to a complaint, third-party complaint, or cross claim or the final reply to counterclaim has been filed, or the time for doing so has expired.

Rule 12 motions contained in an Answer, but not supported by a brief, act as placeholders and do not prevent joinder of the issues. Where Rule 12 motions are filed and briefed, issues will not join until such motions are resolved by the court, unless otherwise ordered by Court.

An examination of the file shows that "joinder of the issues" has not yet occurred in this matter. In the Answer of the Defendant (#4), counterclaims are purported to be presented by the Defendant. The Plaintiff has filed a Motion to Strike, pursuant to Rule 12 of the Federal Rules of Civil Procedure. The Defendant has not yet responded to the Motion to Dismiss and as such, the motions have not been resolved by the Court. As a result, joinder of issues has not occurred as prescribed by LCvR 16.1(D) and the request for the entry of a Pretrial Order and Case Management Plan, at this time, is premature. As a result, the undersigned will decline to enter a Pretrial Order and Case Management Plan until joinder of issues in this matter has occurred as required by LCvR 16.1(D). After joinder of issues has occurred, the parties are directed to conduct an initial attorneys conference as provided by LCvR 16.1(A) and present to the Court a new Certification of Initial Attorneys Conference which shall include a proposed discovery plan.

Signed: August 4, 2014

Dennis L. Howell

United States Magistrate Judge

Dewis & Hawel